IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.527/2007.

Shri Pramod A. Raikar,
Chairman, The Goa Sahakari
Sangh Maryadit, Swami Vivekanand
Road, Panaji, Goa, resident of
Queula, Ponda-Goa. .. Petitioner.

Versus

1. Registrar of Co-operative Societies,
having office at Mala, Panaji-Goa.

2. Shri Narayan Vasudev Mandrekar;

3. Shri. Mhalu G. Naik;

4. Shri Premanand Vasu Chawdikar;

5. Shri Shrikant P. Naik;

6. Shri Gokuldas Shet Narvekar;

7. Shri Prabhakar K. Gawas;

8. Shri. Ramchandra G. Naik Mule,

9. Shri. Shashikant K. Punaji

10. Shri. Vijaykant V. Gaonkar

11 Shri. Vijaykumar S. Patil,

12 Shri. Suresh Gauns;

13 Shri. Uday B. Prabhu;

14 Shri Umesh B. Shirodkar;

15 Shri. Ravindra K. Audeinkar;

16 Shri. Prakash P. Shetye

(Chief Executive Officer)

17 Dr. Datta H. Bhat
(Co-opted);

18 Shri Navnath P. Naik;
(Nominated);

19 The Goa Rajya Sahakari
Sangh Maryadit;
All having office at the Goa
Sahakari Sangh Maryadit,
Dayanand Smriti Second
Floor, Swami Vivekanand Road,
Panaji, Goa. .. Respondents.

Mr. D. J. Pangam,Advocate for the applicant.

Mr. S. R. Rivonkar, Govt Advocate for the respondent No.1.

Mr. A.N.S.Nadkarni, Advocate for the respondent Nos. 9 to 17.

Mr. P. C. Chawdikar, Advocate for the respondent No.2 to 6 absent.

Coram :- F. I. REBELLO &
N.A.BRITTO,JJ.

Date : - 22nd November,2007.

ORAL JUDGMENT :

(PER.. F. I. REBELLO,J.)

Rule. Heard forthwith.

The petitioner and respondent Nos. 2 to 18 are the directors of respondent No.19 a specified Co-operative Society registered under the provisions of the Maharashtra Co-operative Society's Act, 1960 as applicable to the State of Goa. The respondent No.1 issued a notice dated 11.10.2007 convening a special meeting of

the Board of Directors U/s.73(I)(3) of the Act on 25.10.2007 at 10.30 a.m. for the purpose of considering the motion for vote of no confidence against the petitioner herein who was the Chairman of Respondent No.19. At the meeting held, 9 elected members voted in favour of the resolution thereby expressing their no confidence in the petitioner. The motion was accordingly passed as 6 other elected Directors chose not to remain present. It is this resolution which is the subject matter of the present petition.

2. At the hearing of this petition, on behalf of the petitioner their learned Counsel has made the following submissions :

a) The motion in terms of Section 73(I)(1) of the Act had to be by a simple majority of the members of respondent No.19. In the instant case there being 18 members only 9 participated and voted and consequently the motion of no confidence as passed is illegal, null and void.

b) That the resolution passed on 25.10.2007 is illegal, null and void, in as much as no notice of the meeting was given to respondents Nos. 16 and 17 who were entitled to vote at the meeting for considering the motion of no confidence.

c) The meeting dated 25.10.2007 is illegal in as much as there was no required quorum of members at the meeting, in terms of bye-law 28.

In support of his contention, the learned Counsel relied upon the provisions of the Act, and bye-laws and placed reliance on judgment of the Supreme Court in Gajanan Narayan Patil and other Versus Dattatray Waman Patil and another, 1990 (3) S.C.C., 634 and also on

the judgment of this Court in Jaiprakash Raosaheb Salunke and others Versus State of Maharashtra, 2001(3) Mh.L.J.,787.

On the other hand, on behalf of the contesting respondents their learned Counsel submits that on a consideration of Section 73(I) read with the Bye-laws what is required is a simple majority of elected members for passing of motion of no confidence. Bye-laws not being law, Bye law 24(B,) to the extent it requires two third majority is *ultra-vires* Section 73(I) of the Act. The bye-law otherwise would have to be read down to bring it in conformity with Section 73(I). It is next submitted that considering the terminology of Bye-law 24(B) it is the elected members alone who can participate and vote in the motion of no confidence. In the instant case, only elected members participated in the meeting held and by majority of 9 out of 15 elected members have passed the motion of no confidence. It is further submitted that in fact notices of the meeting were served on the respondent No.17 and also on respondent No.16. It is therefore, submitted that the meeting held was legal as notice has been served on respondent Nos. 16 & 17. The learned Counsel drew our attention to the judgment of a learned Single Judge of this Court in the case of Talmakiwadi Co-operative Housing Society Ltd. Versus The Divisional Joint Registrar, Co-operative Societies & Others, 1999(1) Bom.C.R.393. For all the aforesaid reasons it is submitted that the petition filed be dismissed.

3. Having heard the learned Counsel for the petitioners and also the Advocate for the respondents we propose to decide the issues which have arisen herein. Before deciding the same we may also refer to annexure A. It is the notice dated. 11.10.2007 which was addressed and served on only elected members and information of the meeting was also conveyed to the Chief Executive Officer by designation. The

minutes of the meeting would indicate that only 9 members attended and participated in the meeting. An affidavit was filed on behalf of respondent No.16 to contend that the procedure followed for the meeting was similar to the procedure held at the special meeting dated 19.10.2000 where motion of no confidence was passed against late Shri Jaikrishna Shirodkar, a former Chairman. The affidavit also indicates that he was served with the notice of the meeting.

4. We shall first deal with the contention whether the motion had to be passed by majority of elected members. The relevant provision of Section U/s.73(I)(1) reads as under :

> " Section 73(I)(1)- A President, Vice-President Chairman, Vice-Chairman, Secretary, treasurer or any other officer by whatever designation called who holds office by virtue of his election to that office shall cease to be such President, Vice-President,Chairman, Vice-Chairman, secretary, treasurer or any other office, as the case may be,if the motion of no confidence is passed at a meeting of the committee by a simple majority of the total number of committee members who are for the time being entitled to attend and vote at any meeting of the committee and the office of such President. Vice-President, Chairman, Vice-Chairman, secretary, treasurer or any other officer, as the case may be, shall thereupon be deemed to be vacant."

Bye law 24(B) reads as under :-

> "24(B) – The Chairman,Vice-Chairman could be removed from their office by two third majority of the elected members of the Board of Directors. They shall however continue to be the members of the Board till their term on the Board to expire. The Board of Directors will elect new

Chairman and Vice-Chairman in their vacancies. ”

A perusal of the said provision of the Act, indicates that what is required is a simple majority of the total number of committee members who are for the time being entitled to attend and vote at any meeting of the committee . Bye-law 24(B), however sets out that the Chairman could be removed from office by 2/3rd majority of the elected members of the Board of Directors. On a reading of the Section and the bye-law, the bye-law to the extent that it requires 2/3rd majority is inconsistent with Section 73(I)(1). If the bye-laws were subordinate legislation the said bye law would be to the extent that it is contrary to the provisions of section 73(I)(1) be *ultra vires*. The settled position in so far as bye-laws of a Co-operative Society is concerned is that, the bye-laws of Co-operative society are not an exercise in subordinate legislation. The issue is no longer res integra, considering the law declared by the Supreme Court which has held that bye-laws of the Co-operative society are like the Article of Association of a Company incorporated under Companies Act. In other words, they are rules made for internal running of the affairs of the association and are thus binding between members and the persons affected thereto. They don't have force of statue nor a statutory character or statutory flavour. See Central Govt and another Versus Financial Industries Ltd. Hyderabad and other, AIR 1970, S.C. 245 and the judgment in Babaji Kondaji Garad Versu The Nashik Merchant Co-operative Bank Ltd.,1994(1) SCR,767.

The position in law will be, that the bye-laws to the extent they are in conflict with Section 73(I)(1) will have to be read down to bring it in conformity with Section 73(I)(1) and consequently to pass a motion of no confidence what is required is simple majority in terms of the said Section.

The next question considering the language of Section 73(I)(1) and bye-law 24(B) is whether the motion has to be passed by simple majority of all members of the committee or only by the elected members. We have reproduced Section 73(I)(1). A reading thereof would indicate that majority has to be by simple majority of the total number of members who are for the time being entitled to attend and vote at any meeting of the committee. It would thus be clear that those who attend the meeting must have right to vote at the meeting. Bye-law 24(B) speaks only about elected members. Is this violative of Section 73(I)(1) as in terms of the Bye laws the motion to be passed requires two third majority of elected members. Considering the language used in section 73(I)(1) in our opinion, there is no inconsistency. Those eligible to vote at the meeting to consider the motion of no confidence are only the elected members as the motion has to be passed considering the vote of only the elected members and consequently the non-elected members cannot participate in the voting. The contention urged on behalf of the petitioners that all members have the right to vote and it is simple majority of all members cannot be countenanced. The total strength of elected members was 15. Nine elected members were present and voted at the meeting. They would constitute a majority. If the argument of the petitioner was to be accepted, nine would not be a simple majority. However considering that those who can participate in the voting are only the elected members, the motion was passed by the required majority of the elected members and consequently this contention must be rejected.

5. The second and third contention, that we have been called upon to answer is that though respondent Nos. 16, 17 & 18 could not vote at the meeting, they ought to have been given notice of the meeting and allowed to participate in the meeting and constitute the

necessary quorum for the meeting. The bye-laws would show that all members can participate in the meeting and a simple majority would form a quorum, under bye-law 28. A meeting to consider a motion of no-confidence does not cease to be a meeting of the Board. The only procedural change is that the meeting is to be called by the Registrar of Co-operative Society. The parties to at the meeting therefore must be of all members. Their right to vote at such meeting is conferred only to the elected members. Out of the eighteen members only nine participated, that could not be a simple majority. Further notice of the meeting has to be given to all members. The record does not show that notice was given to those non-elected members. Similar issue had come up for consideration before the Supreme Court in Gajanan Narayan Patil (supra). In that case what was challenged was the notice to consider the motion of no confidence. The issue was whether non elected members were required to be served with the notice of requisition to enable them to participate at the special meeting. The learned Bench of this Court on construction of the relevant Section, rules and bye-laws held that as they have no right to vote, there was no requirement of issuing notice and consequently dismissed the petition. The matter went in appeal before the Supreme Court . The Supreme Court on the consideration of the provisions by its majority judgment, held that the Directors representative of the financial institutions as well as expert Director(Co-operative) had the right to participate in the meeting including the special meeting of the Board of Directors. The distinction thus has to be made between voting and the right to participate whether it be ordinary meeting of the Board of Directors or special meeting of the Board of Directors which has been summoned. On the construction of the bye-laws there is nothing which confers powers on respondent No.1, to exclude issuance of notice to the members representing the nominee Director, Govt nominee and to the Chief Executive Officer.

The notice issued on 11.10.2007 and what is annexed to the petition shows that no notices were served on respondent Nos. 16,17 & 18 though in so far as respondent No.16 is concerned in his capacity of Chief Executive Officer, the notice was forwarded for communication. An affidavit has been filed by the respondent No.18 setting out that he was served of the notice and also present to the meeting. This statement is neither supported by the notice annexed nor from the minutes of the meeting. It would thus, be clear that considering the ratio of the judgment of the Supreme Court in Gajanan Narayan Patil and Others that the meeting as convened did not confirm to the requirements in as much as notice of the meeting was not served on these Directors of the Board who were not eligible to vote nor was the a simple majority of members present to constitute a quorum The challenge to that extent will have to be accepted.

6. In the light of that, petition made absolute in terms of prayer clause (a). We make it clear that it is open to the Registrar to call a fresh meeting after compliance with the necessary procedure. The meeting to be called and motion to be considered at any rate not later than 3 weeks from today.

Rule made absolutely accordingly. There shall be no order as to costs. Writ petition disposed of.

F. I. REBELLO,J.

N. A.BRITTO,J.

SMA